IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7783 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAZIR AHMADKHAN G PATHAN - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR PJ VYAS for Petitioner(s) : 1,
MR AY KOGJE AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/02/2007

ORAL JUDGMENT

1. The short controversy in the present matter is that the land bearing Block Nos.834 and 722 could be included in

the holding of the petitioner or it was to be taken into ownership of the trust namely Khangah Pir Trust and the petitioner was simply cultivating the land on behalf of the said trust and whether the land would fall and is includible in the holding of the petitioner in view of the certificate issued under sec.88(B) of the Tenancy Act.

2. Mr.Vyas, learned counsel for the petitioner submits that after the case was closed by the Mamlatdar, the Deputy Collector took up the matter in suo-motu revision and included Block Nos.834 and 722 into the holding of the petitioner and declared the said land of Block Nos.834 and 722 jointly admeasuring 9 Acres and 37 Gunthas as surplus. He submits that if the land of other person was to be included in the petitioner's land, then such person was entitled to be heard and in any case, the land could not be included in the holding of the petitioner.

3. Mr.A.Y. Kogje, learned Assistant Government Pleader for the State on the other hand submits that if the petitioner is not connected with or is not interested in Block Nos.834 and 722, then, he should not bother about the said land and in any case, the petitioner can always say that the possession of those Block Nos.834 and 722 be taken.

4. So far as the orders passed by the Deputy Collector and

the Gujarat Revenue Tribunal are concerned, I am unable to find any wrong in the same in view of the certificate issued under sec.88(B) of the Tenancy Act. In my considered opinion, the authorities were justified in including the said land in the holding of the petitioner. The petitioner, however, would be entitled to express the choice for surrender of particular parcel / parcels of land.

5. So far as this order is concerned, it is against the interest of the present petitioner, but the merits of this order and the orders passed by the Gujarat Revenue Tribunal and the Deputy Collector shall not come in the way of Khangah Pir Trust, if they propose to lodge their claim in relation to these lands, because they were never heard by any authority.

6. I find no reason to interfere. The petition is dismissed. Rule is discharged. Interim relief, if any, is vacated.

(R.S. GARG, J.)

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